IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.518 OF 1998
FROM
NOTICE OF MOTION NO.2106 OF 1994
IN
SUIT NO.3280 OF 1994

Sushiladevi Shreeprakash Malpani
of Bombay, Indian Inhabitant,
having office at Shop No.6,
'B' Wing, Manoj Co-op. Hsg.
Society Ltd., Shankar Ghanekar
Road, Bombay-400 025. .... Appellant

- Versus -

1. Gopal Constructions,
   a Partnership Firm having
   its office at 72/A-B,
   Malpani Chambers, Gokhale
   Road (South),
   Bombay-400 025.

2. Satyanarayan Mahadeo Malpani
   of Bombay, Indian Inhabitant,
   residing at B2/33, Techno-
   craft Co-op. Housing Society
   Limited, Off: Veer Savarkar
   Marg, Bombay-400 025.

3. Shreeprakash Satyanarayan
   Malpani of Bombay, Indian
   Inhabitant, residing at
   402/A Vaibhav Apt.,
   Old Prabhadevi Road,
   Bombay-400 025.

4. Kailashprasad Satyanarayan
   Malpani of Bombay, Indian
   Inhabitant, residing at
   C-4, Rajesh Nagar, Off:
   Saibaba Road, Borivli
   West, Bombay-400 092. .... Respondents

Shri M.V. Pandey for the Appellant.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: JANUARY 10, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. This appeal arises from the Judgment and Order dated 16-9-1997 passed in Notice of Motion No.2106 of 1994 in Suit No.3280 of 1994. By the impugned Order the Notice of Motion which was taken out by the appellant for the relief in the nature of temporary injunction has been discharged.

2. The challenge to the impugned order is on the ground that the learned single Judge did not appreciate the document in question in proper perspective in as much as that the contention of the appellant that the Deed of Cancellation was obtained by playing fraud upon the appellant was not at all considered and the fact that the said Deed apparently discloses that the property which was described in the said Deed was not at all in existence in the manner it was described in the Deed. Attention was sought to be drawn to the copy of the said Deed of Cancellation wherein the plot is described as Survey Nos.2A to 2H while contending that at the relevant time the plots were bearing Survey Nos.2 and 3, whereas the amalgamation thereof and further division under the Survey Nos.2A to 2H took place in April, 1985,

much after the alleged execution of the said Deed of Cancellation of the original Agreement.

3. Perusal of the impugned Order discloses that the learned single Judge after taking into consideration the fact that there has been no dispute between the parties that the documents were in fact signed by the parties and the appellant having not been able to produce any material on record in support of her contention that the appellant had signed those documents without knowing the contents and further that in accordance with the contents of the documents the appellant prima facie appeared to have received the money as described in the said documents and further that the receipt of such money was also reflected in the income-tax returns filed by the appellant, held that prima facie it cannot be said that the appellant has been able to establish that the Deed of Cancellation was obtained by playing fraud upon the appellant. On the contrary, the respondents have prima facie established that such Deed of Cancellation was duly executed and further the Deed of Confirmation was also duly executed by the parties and that, therefore, there is no case for grant of any interim relief.

4. Though attention was sought to be drawn to another Order dated 20-1-1997 in Notice of Motion No.557 of 1995

in Suit No.729 of 1995, which has been filed by the respondent No.2 herein against the appellant and others, while contending that the said Order clearly reflected that already due process have been commenced in the nature of taking out of Notice of Motion in the case in hand, and that therefore the learned single Judge ought to have considered that the appellant has made out a prima facie case regarding fraud being played on the appellant in relation to the Deed of Cancellation of the original Agreement dated 6-2-1980, even in the said Order dated 20-1-1997 the learned single Judge has also observed that though it is sought to be contended on behalf of the respondent therein, who is the appellant herein, that the Deed of Cancellation was obtained by playing fraud, the matter in that regard is to be decided on final adjudication in the Suit. Indeed, similar is the view taken by the learned single Judge in the case in hand while holding that the defendant No.2 in the present Suit has prima facie established the Deed of Cancellation dated 21-1-1985 and the Deed of Confirmation dated 7-9-1988 in relation to the original Agreement dated 6-2-1980.

5. Attention was also sought to be drawn to the property cards in support of the contention that at the relevant time the property was not amalgamated nor was further divided into sub-divisions A to H of Survey

No.2. However, analysis of those documents prima facie do not establish that at the relevant time the property in question continued to bear Survey Nos.2 and 3 separately and did not bear Survey Nos.2A to 2H. Merely by referring to the mutation entries and the dates of the applications to the Revenue Office for carrying out the mutation entries in that regard, it cannot be held, at this stage, that the property which was the subject-matter of the Deed of Cancellation was not in existence at the relevant time. The parties will have to lead necessary evidence in support of their rival contentions in that regard and the same can be decided only on merits on final adjudication of those contentions. It is too premature to arrive at any finding in that regard merely by looking at the entries in the survey records and comparing the same with the description in the Deed of Cancellation.

6. Since the learned single Judge, on consideration of all the relevant materials on record, has held that the appellant has failed to make out a prima facie case, we do not find any justification for interference, even on re-assessment of those materials relevant for the decision at the interim stage.

7. As regards the expeditious hearing and disposal of the suit, the appellant may move for the same before the

learned single Judge.

8. As no other point is canvassed challenging the impugned Order, we do not find any case being made out for interference in the impugned Order and hence the appeal fails and is hereby dismissed. There shall be no order as to costs.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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